IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19239 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. GUJARAT PUBLIC SCHOOL THRO' MANAGER & 2 - Petitioner(s)

Versus

GUJARAT SECONDARY & HIGHER SECONDARY EDUCATION BOARD & 4 - Respondent(s)

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Appearance :

M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 3.
MR AD OZA for Respondent(s) : 1,
MS. ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 2, 5,
MR BHAVIK A JOSHI for Respondent(s) : 3,
MR SS ACHARYA for Respondent(s) : 3,
NOTICE SERVED BY DS for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/01/2006

ORAL JUDGMENT

1. Rule. Shri A.D.Oza, learned advocate waives service of rule on behalf of the respondent No.1, Ms. Archna

Raval, learned AGP waives service of rule on behalf of the respondent Nos.2 and 5 and Shri B.A.Joshi & Shri S.S.Acharya, learned advocates waive service of rule on behalf of the respondent No.3.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat Secondary & Higher Secondary Education Board, Gandhinagar dated 3.8.2005 granting the permission to the respondent No.3 to transfer their secondary school from A-85, Sanpatrav Colony, Alkapuri, Vadodara to Mira School, Atladara Main Road, Nr. Kalali Crossing, Vadodara.

4. It is the contention on behalf of the petitioners that inspite of the fact that the petitioners objected to granting of such transfer as the same is likely to affect the petitioners and even otherwise, it is not permissible, the Gujarat Secondary & Higher Secondary

Education Board passed the impugned order to the detriment to the petitioners' interest and granted the permission in favour of the respondent No.3 to transfer the secondary school. Shri A.D.Oza, learned advocate appearing on behalf of the respondent-Board is not in a position to satisfy this Court *whether the objections raised by the petitioners were considered or not and whether the petitioners were given any opportunity or not*. He has also submitted that the respondent-Board would not have any objection in considering the objections submitted by the petitioners and to give an opportunity to the petitioners and to pass an appropriate order in accordance with law and on merits afresh after hearing all the parties. Shri Nanavati, learned senior advocate appearing on behalf of the respondent No.3 has also no objection and submitted that let the Board may take appropriate decision in accordance with law and on merits after considering the objections submitted by the petitioners and after hearing the petitioners and even after hearing the respondent No.3 also. Under the circumstances, following order is passed :-

The impugned order dated 3.8.2005 is hereby quashed and set aside without entering into the merits of the

case. The matter is remanded to the Gujarat Secondary & Higher Secondary Education Board to pass an appropriate order in accordance with law and on merits after considering the objections submitted by the petitioners. It will be open for the petitioners to submit that the present petition be treated as objection/representation/application and the Board is directed to consider the same after giving an opportunity to the petitioners as well as the respondent No.3 and pass speaking order in accordance with law and on merits and shall communicate the outcome of the same to the petitioners as well as the respondent Nos.3 and 4 until then, parties are directed to maintain status-quo as directed by this Court vide order dated 11.10.2005 granted in Civil Application No.9953 of 2005 and it is also agreed by the respondent No.3 that the respondent No.3 will not claim any equity on the basis of the said order of status-quo and if any adverse order is passed against the respondent No.3, the same will be abide by subject to challenging the same before the higher forum. The Board is directed to take an appropriate decision in accordance with law and on merits as stated above on or before ***30th April, 2006****.*

5. This present Special Civil Application is dispose of accordingly. However, this Court has not expressed any opinion in favour of the either parties and the Board is directed to take an appropriate decision in accordance with law and on merits without prejudice to any of observations made by this Court in the present Special Civil Application while passing the order.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.